

United States

Circuit Court of Appeals

For the Ninth Circuit.

UNION STEAMSHIP COMPANY, a Corporation,
Claimant of the American Steamship
"ARGYLL," Her Engines, Boilers, etc.,
Appellant,

vs.

GUALALA STEAMSHIP COMPANY, a Corporation,
Appellee.

Apostles.

Upon Appeal from the United States District Court for
the Northern District of California,
First Division.

United States
Circuit Court of Appeals
For the Ninth Circuit.

UNION STEAMSHIP COMPANY, a Corpora-
tion, Claimant of the American Steamship
“ARGYLL,” Her Engines, Boilers, etc.,
Appellant,

vs.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the United States District Court for the Northern
District of California, First Division.*

IN ADMIRALTY—No. 15,327.

GUALALA STEAMSHIP COMPANY, a Corpora-
tion,

Libelant,

vs.

The Steamer "ARGYLL," Her Engines, Boilers,
Machinery, Tackle, Apparel, and Furniture,
Respondent.

THE UNION STEAMSHIP COMPANY, a Cor-
poration,

Claimant.

Praecipe for Apostles on Appeal.

To the Clerk of the Above-entitled Court:

Please prepare transcript of record in this cause to be filed in the office of the clerk of the United States Circuit Court of Appeals for the Ninth Circuit upon the appeal heretofore perfected in this court, and include in said transcript the following pleadings, proceedings and papers on file, to wit:

1. All those papers required by section 1 of paragraph 1 of Rule 4 of the rules of admiralty of the United States Circuit Court of Appeals for the Ninth Circuit; [1*]

2. All the pleadings in said cause and all the exhibits annexed thereto;

3. The stipulation waiving reference and agreeing upon the amount of damages;

4. The opinion and decision of the Court;

*Page-number appearing at foot of page of original certified Record.

5. The final decree and notice of appeal;
6. The assignment of errors.

IRA A. CAMPBELL,
 McCUTCHEN, OLNEY & WILLARD,
 Proctors for Claimant and Respondent.

[Endorsed]: Filed Nov. 7, 1914. W. B. Maling,
 Clerk. By C. W. Calbreath, Deputy Clerk. [2]

*In the District Court of the United States, in and for
 the Northern District of California, First Divi-
 sion.*

No. 15,327.

GUALALA STEAMSHIP COMPANY, a Corpora-
 tion,

Libelant,

vs.

The Steamer "ARGYLE," Her Engines, Boilers,
 etc.,

Respondent.

Statement of Clerk United States District Court.

PARTIES.

Libelant: Gualala Steamship Company, a Corpora-
 tion.

Respondent: The steamer "Argyle," her engines,
 boilers, etc.

Claimant: Union Steamship Company. [3]

PROCTORS

for

Libelant: Ira S. Lillick, Esquire, San Francisco,
 California.

Respondent and Claimant: Messrs. McCutchen, Ol-

ney & Willard, and Ira A. Campbell, Esquire,
San Francisco, California.

PROCEEDINGS.

1912.

October 26. Filed verified Libel, for damages
caused by collision, in the sum of
\$38,000.00.

Issued Monition for attachment of
the steamer "Argyle," which said
Monition was, on October 28th,
returned and filed with the fol-
lowing return of the United States
Marshal endorsed thereon: "I
hereby certify and Return that I
received this Monition on the
26th day of October, 1912, at San
Francisco, California, and that
under [4] and by virtue of the
terms of a stipulation entered into
between the proctors for the re-
spective parties hereto, I made no
seizure of said steamer 'Argyle,'
her engines, boilers, etc., and re-
turn this writ accordingly.

C. T. ELLIOTT,

U. S. Marshal.

By Geo. H. Burnham,

Chief Office Deputy.

San Francisco, Cal., October 28,
1912."

Filed claim of Union Steamship
Company.

Filed stipulation (Bond) for release of steamer "Argyle," in the sum of \$40,000.00, with the National Surety Company, as surety.

1913.

March

6. Filed depositions of Fred Carlson, Ernest Comstedt, and Harry De-loss Gibbs, taken on behalf of libellant, before United States Commissioner Francis Krull.

July

17. Filed answer of Union Steamship Company, a corporation, owners of the steamship "Argyle." [5]

August

18. The Court this day ordered that this cause be consolidated for trial with the cause entitled Konstant Latz vs. The Steamer "Argyle," her Engines, etc., No. 15,335.

September

16. The Court this day ordered that this cause be consolidated for trial with causes entitled A. W. Beadle vs. American Steamship "Argyle," her Engines, etc. No. 15,329, Aslak Abrahamsen vs. The American Steamship "Argyle," her Engines, etc., No. 15,458, and Konstant Latz vs. The American Steamship "Argyle," her Engines, etc., No. 15,335.

October

15. The above-entitled causes, as heretofore consolidated, this day came on for hearing in the District

Court of the United States, for the Northern District of California, at the City and County of San Francisco, before the Honorable M. T. Dooling, Judge, and after hearing duly had, were continued until October 16th, 1913, for further hearing, on which last day said causes were submitted to the Court for decision.

November 18. The causes as heretofore consolidated were by leave of the Court first had, reopened for a further hearing, before the Honorable M. T. Dooling, Judge of the said Court, and were resubmitted to the Court for decision. [6]

1914.

- May
6. The Court this day filed an opinion. Ordered that the causes entitled A. W. Beadle vs. Steamship "Argyle," No. 15,329, and Gualala Steamship Company, vs. Steamship "Argyle," No. 15,327 be referred to a United States Commissioner to ascertain and report the amount of damage sustained by libelants in said causes.
 8. Filed two volumes of testimony taken in open court.
 9. Filed interlocutory decree.

November 7. Filed stipulation as to amount of damage sustained by libellant, and waiving reference heretofore made to United States Commissioner.

Filed final decree.

Filed notice of appeal.

Filed assignment of errors.

November 12. Filed cost of supersedeas bond.

(Copies of the testimony and depositions, and all original exhibits introduced or filed in any of the above-consolidated causes have been transmitted to United States Circuit Court of Appeals for the Ninth Circuit in accordance with stipulation and order dated August 31st, 1914, a copy of which is included in the Apostles in the cause entitled Konstant Latz vs. Steamship "Argyle," No. 15,335, and therefore said copies and exhibits are omitted from this transcript.) [7]

*In the District Court of the United States, for the
Northern District of California, First Division.*

IN ADMIRALTY—No. 15,327.

GUALALA STEAMSHIP COMPANY, a Corpora-
tion,

Libelant,

vs.

The Steamer "ARGYLE," Her Engines, Boilers,
Boats, Tackle, Apparel, Furniture and Ap-
purtenances,

Respondent.

Libel in Rem.

To the Honorable, the Judges of the District Court
of the United States, for the Northern District
of California:

The libel of Gualala Steamship Company, a cor-
poration, against the steamer "Argyle," her engines,
boilers, boats, tackle, apparel, furniture and appurte-
nances, in a cause of collision, civil and maritime,
alleges:

I.

That the libelant is and was, during all of the
times hereinafter mentioned, a corporation duly
formed, organized and existing under and by virtue
of the laws of the State of California, with its prin-
cipal place of business in the City and County of
San Francisco, said State, and is and was, during all
of said times, the owner of the steamship "Gualala,"
an American vessel, with a wooden hull, of about two

hundred and twenty-five (225) gross tons, registered.
[8]

II.

That respondent steamer is, as libelant is informed and believes and upon such information and belief alleges, an American vessel, with a steel hull, of about twenty-seven hundred and fifty-three (2753) gross tons, registered, and now in the waters of the San Francisco Bay, and within the jurisdiction of this Honorable Court.

III.

That heretofore, and on or about, to wit, the 15th day of October, 1912, at about three o'clock A. M. of said day, while proceeding on a southeasterly course in the Pacific Ocean, about twenty (20) miles southwest of Point Arena, said steamship "Gualala" was run into and so badly damaged by said steamship "Argyle" that said steamship "Gualala" immediately filled with water and turned turtle; that at, and for about twenty (20) minutes prior to the time of the collision, the weather was clear; that at, and prior to, the time of the collision there was no wind and the sea was smooth; that said steamship "Gualala" was in every respect seaworthy and fully and completely equipped and manned by the full complement of officers and crew, and at the time of, and prior to, said collision, was displaying all lights, and giving all signals, required by law, and was being carefully and cautiously navigated in accordance with the rules and regulations governing the navigation of steam vessels.

That said collision was due to no act of fault or

neglect on the part of the officers and crew of said steamship "Gualala," but was solely due to the careless and negligent navigation of respondent steamer, and particularly so in that when said vessels were about a half a mile apart, with the [9] masthead or range lights and only the red or port light of each vessel visible from the other, said steamship "Gualala" blew one blast of her whistle and ported her helm and said steamship "Argyle" answered said blast by blowing one blast of her whistle but starboarded her helm instead of putting it to port and that immediately thereafter, notwithstanding that the engines of the "Gualala" were reversed and run full speed astern, said steamship "Argyle" ran into and sank said steamship "Gualala."

IV.

That by reason of said collision, said steamship "Gualala" suffered such damage as to become a total loss, and libelant has been damaged thereby and by the loss of said steamship's freight in the sum of Thirty-eight Thousand (38,000) Dollars.

V.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

WHEREFORE, libelant prays that process in due form of law, according to the course of this Honorable Court, in cases of admiralty and maritime jurisdiction, may issue against the said steamer "Argyle," her engines, boilers, boats, tackle, apparel, furniture and appurtenances, and that all persons having any interest thereon may be cited to appear and answer,

on oath, all and singular the matters aforesaid; and that this Honorable Court will be pleased to decree the payment of the damages, as aforesaid, with interest, and costs, and that said vessel may be condemned and sold to pay the same; and that [10] libelant may have such other and further relief as in law and justice it may be entitled to receive.

GUALALA STEAMSHIP COMPANY.

By FRED LINDERMAN,
Its President.

IRA S. LILLICK,
Proctor for Libelant.

United States of America,
Northern District of California,—ss.

Fred Linderman, being first duly sworn, on oath, deposes and says: That he is an officer of the corporation libelant in the above-entitled action, to wit, the President thereof; that he has read the foregoing libel, knows the contents thereof and believes the same to be true.

FRED LINDERMAN.

Subscribed and sworn to before me this 26 day of October, 1912.

[Seal] C. W. CALBREATH,
Deputy Clerk, U. S. District Court, Northern District of California.

[Endorsed]: Filed Oct. 26, 1912. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [11]

In the District Court of the United States of America, Northern District of California.

IN ADMIRALTY—No. 15,327.

GUALALA STEAMSHIP COMPANY,

Libellant,

vs.

The Steamship "ARGYLE," Her Engines, Boilers,
etc.,

Respondent.

Claim of Union Steamship Company.

To the Honorable JOHN J. DE HAVEN, Judge of
the District Court of the United States for the
Northern District of California:

The claim of Union Steamship Company to the
steamship "Argyle," her tackle, apparel and furni-
ture, now in the custody of the marshal of the United
States for the said Northern District of California,
at the suit of said Gualala Steamship Company, al-
leges:

That it is the true and *bona fide* owner of the said
steamship "Argyle," her tackle, apparel and furni-
ture, and that no other person is owner thereof.

Wherefore, this claimant prays that this Honor-
able Court will be pleased to decree a restitution of
the same to it, and otherwise right and justice to
administer in the premises.

UNION STEAMSHIP COMPANY,

By W. G. TUBBY,

President.

IRA A. CAMPBELL,

Proctor for Claimant.

Northern District of California,—ss.

Subscribed and sworn to before me this 26th day of Oct., A. D. 1912.

[Seal]

FRANCIS KRULL,
Deputy Clerk, U. S. District Court, Northern District of California. [12]

[Endorsed]: Filed Oct. 26, 1912. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [13]

In the United States District Court for the Northern District of California, First Division.

IN ADMIRALTY—No. 15,327.

THE GUALALA STEAMSHIP COMPANY,
Libelant,

vs.

The Steamer "ARGYLL," Her Engines, Boilers, Boats, Tackle, Apparel, Furniture and Appurtenances,

Respondent.

UNION STEAMSHIP COMPANY, a Corporation,
Claimant.

Answer.

To the Honorable WM. C. VAN FLEET, Judge of the United States District Court for the Northern District of California:

The answer of the Union Steamship Company, a corporation, to the libel of the Gualala Steamship Company, a corporation, respectfully admits, denies and alleges, as follows:

I.

Claimant admits the allegations of paragraph I of said libel. [14]

II.

Claimant admits the allegations of paragraph II of said libel.

III.

Answering unto the allegations of paragraph III of said libel, claimant admits that, heretofore, on or about the 15th day of October, 1912, at about three o'clock A. M. of said day, while proceeding on a general southeasterly course in the Pacific Ocean, approximately 20 miles southeast of Point Arena, said steamship "Gualala" was run into and so badly damaged by said steamship "Argyll" that said steamship "Gualala" immediately filled with water and turned turtle, and admits that at, and for more than twenty minutes prior to, the time of the collision, the weather was clear, and that at, and prior to, the collision there was no wind and the sea was smooth. Claimant has no knowledge as to whether said "Gualala" was in every respect seaworthy and fully and completely equipped and manned by a full complement of officers and crew, and therefore demands that proof of the same be made. Claimant admits that at the time of, and prior to, said collision said "Gualala" was displaying all lights, but denies that she was giving all signals required by law, and denies that she was being carefully and cautiously navigated in accordance with the rules and regulations governing navigation of steam vessels.

Claimant denies that said collision was due to no

act or fault or neglect on the part of the officers and [15] crew of said steamship "Gualala," and denies that said collision was solely, or at all, due to the careless and negligent navigation of said steamship "Argyll." Claimant denies that when said vessels were about half a mile apart the masthead or range lights and only the red, or port, light of each vessel was visible from the other, and denies that while in such position, the steamship "Gualala" blew one blast on her whistle and ported her helm, and that said steamship "Argyll" answered said blast by blowing one blast on her whistle, but starboarded her helm instead of putting it to port, and denies that immediately thereafter notwithstanding that the engines of the "Gualala" were reversed and run full speed astern, said steamship "Argyll" ran into and sank said steamship "Gualala." Claimant particularly denies that when said vessels were about half a mile apart, the red, or port, light of each vessel was visible from the other, and in that behalf alleges that when said vessels were about half a mile apart, the masthead or range lights, and only the green, or starboard, light of each vessel was visible from the other, and that while in such positions said steamship "Gualala" blew one blast on her whistle and ported her helm, and started across the bows of said "Argyll," and that thereupon, to avoid said collision, said "Argyll" ported her helm and blew one blast on her whistle to indicate to said "Gualala" that she was altering her course to starboard, and immediately thereafter, collision impending, said "Argyll" reversed full speed astern and gave three

[16] blasts on her whistle to indicate such maneuver, but notwithstanding such efforts to avoid said collision, the "Argyll" struck the "Gualala" on the port bow, a short distance aft the stem. Except as herein admitted, claimant denies the remaining allegations of said paragraph.

IV.

Answering unto the allegations of paragraph IV of said libel, claimant denies that by reason of said collision, said steamship "Gualala" suffered such damages as to become a total loss, and denies that libelant has been damaged thereby, and by the loss of said steamship's freight in the sum of thirty-eight Thousand (38,000) Dollars.

V.

Answering unto the allegations of paragraph V of said libel, claimant denies that all and singular the premises are true, but admits that they are within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Further answering unto the allegations of said libel, claimant alleges:

I.

That while proceeding on a NW. $\frac{1}{2}$ W. course at a point approximately 20 miles southeast of Point Arena, the steamship "Argyll" came into collision with the steamer [17] "Gualala," striking the latter on her port bow approximately 11 feet abaft her stem; that the sea was smooth and the night clear, and said vessels approached each other on practically opposite courses, starboard to starboard, the mast-head light and green light of the "Gualala" having

been first observed by those in charge of the navigation of the "Argyll" at about a point to a point and a half on the latter's starboard bow when the vessels were approaching one and one-half miles apart; that said vessels continued to approach, green light to green light, until they were within two or three ship's lengths apart, when the "Gualala" suddenly blew a single blast on her whistle and ported her helm, showing both running lights, and then her red light alone to the "Argyll," and started to cross the course of the latter; that upon such alteration of course on the part of the "Gualala," the officer in charge of the "Argyll," seeing that collision could only be avoided by quickly swinging the "Argyll's" head to starboard, ported her helm, and blew a single blast on her whistle to advise the "Gualala" of such maneuver, and then immediately reversed full speed astern on her engines and gave the required signal of three blasts to the "Gualala"; but despite every effort of the "Argyll" to avoid said collision, the two vessels came together, striking practically head on.

II.

That said steamship "Argyll" was in all respects seaworthy; fully manned, equipped and supplied, and said [18] collision was due to no fault or error in her navigation, but was solely caused by the afore-said negligence of said steamer "Gualala" in attempting, without cause, to cross the bows of said "Argyll" at a time which made collision inevitable.

III.

That all and singular the premises are true, and

within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, claimant prays that the above-entitled action may be dismissed with costs.

IRA A. CAMPBELL,
McCUTCHEN, OLNEY & WILLARD,
Proctors for Claimant. [19]

State of California,
City and County of San Francisco,—ss.

W. G. Tubby, being first duly sworn, on oath, deposes and says:

That he is the president of the Union Steamship Company, a corporation, claimant herein; that he has read the foregoing answer, knows the contents thereof, and believes the same to be true.

W. G. TUBBY.

Subscribed and sworn to before me this 16th day of July, 1913.

[Seal] FLORA HALL,
Notary Public in and for the City and County of
San Francisco, State of California. [20]

Service of the within Answer and receipt of a copy is hereby admitted this 17th day of July, 1913.

IRA S. LILLICK,
Proctors for Libellant.

[Endorsed]: Filed Jul. 17, 1913. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [21]

**[Order Consolidating Case No. 15,327 With Case
No. 15,355, etc.]**

At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Monday, the 18th day of August, in the year of our Lord one thousand nine hundred and thirteen. Present: The Honorable M. T. DOOLING, Judge.

#15,327.

GUALALA S. S. CO.

vs.

Str. "ARGYLE," etc.

By the Court ordered that this cause be and the same is hereby consolidated with case #15,335 for trial and set for October 1, 1913, for trial. [22]

**[Minutes of Court—September 16, 1913—Re
Marshal's Return on Monition, Proclamation,
etc.]**

At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Tuesday, the 16th day of September, in the year of our Lord one thousand nine hundred and thirteen. Present: The Honorable

WM. C. VAN FLEET, and the Honorable M. T.
DOOLING, Judges.

#15,458.

Before DOOLING, Judge.

ASLAK ABRAHAMSEN

vs.

The Am. Steamship "ARGYLE," etc., et al.

The U. S. Marshal having made return to the monition issued herein that "I hereby certify and return that I received the within writ at San Francisco, California, on August 29th, 1913, and herewith return the same for the reason that a bond was given for the release of said steamship without seizure being made."

On motion of S. T. Hogevoll, Esqr., proclamation was duly made for all persons having anything to say to appear and answer the libel herein, and on motion of Joe McKeon, Esqr., by the Court ordered that claimant of S. S. "Argyle" have ten days to answer the said libel. On motion of Ira S. Lillick, Esqr., Gualala S. S. Co., granted 5 days to answer said libel. Further ordered that this cause be and the same is hereby consolidated with causes numbered 15,327, 15,329, 15,335, respectively, for all further proceedings to be had. [23]

[Minutes—October 15, 1913—Hearing.]

At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Wednesday, the 15th day of October, in the year of our Lord one thousand nine hundred and thirteen. Present: The Honorable M. T. DOOLING, Judge.

#15,327, 15,335, 15,458 and 15,329.

THE GUALALA S. S. CO. et al.

vs.

The Am. S. S. "ARGYLE," etc.

These causes as consolidated for trial, this day came on for hearing, Ira S. Lillick, Esqr., and L. A. Redman, Esqr., appearing for libelant, The Gualala S. S. Co., F. R. Wall, Esqr., for libelant K. Latz, S. T. Hogevoll, Esqr., for libelant A. Abrahamsen. Mr. Lillick stated cause and called Fred Linderman, who was duly sworn and examined as a witness on behalf of the libelant, The Gualala S. S. Co., and read and introduced in evidence depositions taken on behalf of said libelant before a United States Commissioner, and called Louis d'Curtoni and Martin Kalnin, who were each duly sworn and examined as witnesses on behalf of libelant. Libelant introduced certain exhibits, which were marked "Libelant's Exhibits 1, 2 and 3, respectively.

Mr. Campbell called D. S. McAlpine, who was duly sworn and examined for claimant, and introduced

in evidence certain exhibits, which were marked Claimant's Exhibits "A" and "B" respectively. The further hearing was thereupon continued until to-morrow. [24]

**[Minutes of Court—October 16, 1913—Hearing
(Resumed).]**

At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Thursday, the 16th day of October, in the year of our Lord one thousand nine hundred and thirteen. Present: The Honorable M. T. DOOLING, Judge.

“ARGYLE”—#15,327, 15,329, 15,335, 15,458.

The further hearing of these causes as consolidated was resumed. Mr. Campbell called Richard Dixon, who was duly sworn and examined on behalf of claimant. Mr. Hogevoll called Thos. W. Connolley, who was duly sworn and examined on behalf of libelant Abrahamsen. Mr. Campbell called John Hansen, Andrew Forbosen and Benjamin Sanford, George Curtis, James Dickey, A. F. Pillsbury, David Dickey, Frank E. Ferris, who were each duly sworn and examined as witnesses on behalf of claimant. Mr. Hogevoll called Aslak Abrahamsen, who was duly sworn and examined in his own behalf. Mr. Wall called K. Latz, who was duly sworn and examined in his own behalf. Mr. Lillick called John H. Rinder and Jacob Stack, who were each duly sworn and ex-

amined on behalf of libelant The Gualala S. S. Co., in rebuttal. Aslak Abrahamsen was also recalled. Mr. Campbell recalled Richard Dixon for further examination. The causes were then submitted to the Court for decision upon briefs to be filed in 10, 10 and 5 days. Claimant introduced exhibits marked "C," "D" and "E." Libelant Abrahamsen introduced an exhibit which was marked "A." [25]

**[Minutes of Court—November 18, 1913—Hearing
(Resumed).]**

At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Tuesday, the 18th day of November, in the year of our Lord one thousand nine hundred and thirteen. Present: The Honorable M. T. DOOLING, Judge.

"ARGYLE" and "GUALALA"—#15,327, 15,335, 15,458, 15,329.

These causes as consolidated this day came on for further hearing. Ira S. Lillick, Esqr., F. R. Wall, Esqr., and Ira A. Campbell, Esqr., appearing. Mr. Lillick called L. Curtis, who was duly sworn and examined. The following exhibits were introduced in evidence. "Beadle's Ex. marked 4 and Claimant's Exhibit marked "F." The causes were then submitted on briefs to be filed in 10, 10 and 5 days. [26]

[Order Referring Causes to U. S. Commissioner to Ascertain and Report Damages, etc.]

At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Wednesday, the 6th day of May, in the year of our Lord one thousand nine hundred and fourteen. Present: The Honorable M. T. DOOLING, District Judge.

No. 15,327, 15,329, 15,335 and 15,458.

GUALALA STEAMSHIP COMPANY et al.

vs.

The Am. Stmr. "ARGYLE,"

and

THE GUALALA STEAMSHIP CO., etc.

The Court this day filed its written Opinion and Order that a Decree be entered in favor of the libelants in said cases and fixing the liability of the "Argyle." Further ordered that said causes be, and they are hereby, referred to a United States Commissioner to ascertain and report the damages suffered by the libelants, A. W. Beadle and the Gualala Steamship Company. [27]

[Opinion.]

*In the District Court of the United States, in and
for the Northern District of California, First
Division.*

IN ADMIRALTY—No. 15,327.

GUALALA STEAMSHIP COMPANY, a Corpora-
tion,

Libelant,

vs.

The Steamer "ARGYLE," Her Engines, Boilers,
etc.,

Respondent.

THE UNION STEAMSHIP COMPANY, a Cor-
poration,

Claimant.

No. 15,329.

A. W. BEADLE,

Libelant,

vs.

The Steamer "ARGYLE," etc.,

Respondent.

THE UNION STEAMSHIP COMPANY, a Cor-
poration,

Claimant.

No. 15,335.

KONSTANT LATZ,

Libelant,

vs.

The American Steamship "ARGYLE," and THE
GUALALA STEAMSHIP COMPANY, a
Corporation,

Respondent.

THE UNION STEAMSHIP COMPANY, a Cor-
poration,

Claimant. [28]

No. 15,458.

ASLAK ABRAHAMSEN,

Libelant,

vs.

The American Steamship "ARGYLE," and THE
GUALALA STEAMSHIP COMPANY, a
Corporation,

Respondent.

THE UNION STEAMSHIP COMPANY, a Cor-
poration,

Claimant.

IRA S. LILLICK, Esq., Proctor for Gualala
Steamship Company, a Corporation, and
A. W. Beadle, Libelants.

F. R. WALL, Esq., Proctor for Konstant Latz,
Libelant.

S. T. HOGEVOLL, Esq., Proctor for Aslak Abrahamsen, Libelant.

IRA A. CAMPBELL, Esq., McCUTCHEN, OLNEY & WILLARD, Proctors for Claimant.

These cases arise out of an accident in which two vessels propelled by steam, under full control and having the whole Pacific Ocean in which to maneuver, collided on a clear night, when the lights of each were easily discernible to the other while they were yet miles apart. As is usual in such cases, with each vessel endeavoring to throw the blame upon the other, the testimony is quite voluminous and very conflicting, and I cannot find the requisite time to review it in this decision. From established facts, however, I am of the opinion that the “Argyle,” must [29] be held responsible for the collision for the following reasons:

I. For inefficiency of the look-out in not reporting when the “Gualala’s” red light and her green light were visible at the same time, and in not reporting when he lost her green light and picked up her red light alone.

II. For negligence on the part of McAlpine, the Deck Officer, in not observing the “Gualala’s” course because of his failure to note when her red light and her green light were visible together, and when her green light disappeared from view; because of his failure to observe her red light until warned by her whistle; and because of the fact that when the “Gualala’s” lights were first sighted he contented himself with directing the quartermaster “not to let

her come any closer," apparently paying no further attention to her until warned by her whistle when it was too late to avoid a collision.

The log of the chief officer of the "Argyle" shows that seven minutes elapsed from the time the look-out reported the "Gualala's" light until the blowing of her whistle. At what period of this interval it should have been apparent to the navigator of the "Argyle" that the "Gualala" was on a crossing course upon the "Argyle's" starboard side cannot now be determined, but it is clear that it should have been known to him earlier than it was, and at least at the time when both lights were visible to the look-out, and not reported, and at a time when, if Mc-Alpine were watching, he would have seen both lights together, the green light disappear, and the red alone remain in [30] view. Had these things been observed, earlier precautions could have been taken by the "Argyle" to avoid the collision, which Mc-Alpine declares was inevitable when the warning whistle of the "Gualala" called his attention to her course and proximity. Much expert testimony was introduced to show that the collision could not have occurred in the manner testified to by Gibbs, but the value of this testimony depends upon the accuracy of estimates of time, courses and distances. Such estimates are of necessity more or less uncertain. With a full appreciation of the seriousness of my conclusion to the "Argyle," I am nevertheless convinced that had the look-out and the deck officer on that vessel been as attentive to their duties as the

occasion required the collision could not have occurred.

A decree will be entered accordingly establishing the liability of the "Argyle," and referring the cause to the commissioner to ascertain and report the damage suffered by libelants A. W. Beadle and Gualala Steamship Company. As to libelant Aslak Abrahamson a decree will be entered awarding him damages in the sum of \$3,621.00. As to libelant Konstant Latz a decree will be entered awarding him damages in the sum of \$3,500.00.

Each libelant will recover costs.

May 6th, 1914.

M. T. DOOLING,
Judge.

[Endorsed]: Filed May 6, 1914. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [31]

In the District Court of the United States, in and for the Northern District of California, First Division.

IN ADMIRALTY—No. 15,437.

At a stated term of the District Court of the United States of America, for the Northern District of California, held in the city of San Francisco, on Saturday, the 9th day of May, in the year of our Lord one thousand nine hundred and fourteen (1914). Present: The Honorable MAURICE T. DOOLING, District Judge.

GUALALA STEAMSHIP COMPANY, a Corporation,
tion,

Libelant,

vs.

The Steamer "ARGYLE," Her Engines, Boilers,
Machinery, Tackle, Apparel and Furniture,
Respondent.

THE UNION STEAMSHIP COMPANY, a Corporation,
poration,

Claimant.

Interlocutory Decree.

The above-entitled cause having been heard on the pleadings and proofs in said cause, and having been argued by the proctors for the respective parties, and having been heretofore submitted to the Court for decision;

IT IS NOW ORDERED, ADJUDGED AND DECREED by the Court that the libelant do have and recover from the respondent the amount due to it for damages sustained by it by reason of the collision between the steamer "Gualala" and the steamer "Argyle," as alleged in the libel on file herein; [32]

AND IT IS FURTHER ORDERED that the said cause be referred to Francis Krull, Esq., commissioner, to ascertain and compute the amount due to the libelant in the premises and to report the same to this court.

Done this 9th day of May, 1914.

M. T. DOOLING,

Judge.

[Endorsed]: Filed and entered May 9, 1914.
W. B. Maling, Clerk. By C. W. Calbreath, Deputy
Clerk. [33]

*In the United States District Court for the Northern
District of California, First Division.*

IN ADMIRALTY—No. 15,327.

GUALALA STEAMSHIP COMPANY, a Corpora-
tion,

Libelant,

vs.

The Steamer "ARGYLL," Her Engines, Boilers,
Machinery, Tackle, Apparel and Furniture,
Respondent.

THE UNION STEAMSHIP COMPANY, a Cor-
poration,

Claimant.

Stipulation as to Damages.

WHEREAS, an interlocutory decree was on the 9th day of May, 1914, entered in the above-entitled cause, ORDERING, ADJUDGING AND DECREERING that libelant have and recover from respondent and claimant the amount due it for damages sustained by reason of the collision between the steamer "Gualala," and the steamer "Argyll"; and,

WHEREAS, it was further ordered that said cause be referred to Francis Krull, Esquire, United States Commissioner, to ascertain and compute the amount due libelant in the premises, and to report the same to this Court;

NOW, THEREFORE, IT IS HEREBY STIPULATED and AGREED by and between the respective parties hereto that the damages sustained by libelant by reason of the collision between the [34] steamer "Argyll" and the steamer "Gualala" was the sum of twenty-five thousand two hundred fifty (25,250) dollars;

IT IS FURTHER STIPULATED AND AGREED by and between the said parties that the reference to Francis Krull, Esquire, United States Commissioner, to ascertain and compute said damages is hereby waived.

Dated: San Francisco, California, November 5, 1914.

IRA S. LILLICK,

Proctor for Libelant.

IRA A. CAMPBELL,

McCUTCHEN, OLNEY & WILLARD,

Proctors for Respondent and Claimant.

[Endorsed]: Filed Nov. 7, 1914. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [35]

*In the United States District Court for the Northern
District of California, First Division.*

IN ADMIRALTY—No. 15,327.

GUALALA STEAMSHIP COMPANY, a Corpora-
tion,

Libelant,

vs.

The Steamer "ARGYLL," Her Engines, Boilers,
Machinery, Tackle, Apparel and Furniture,
Respondent,

THE UNION STEAMSHIP COMPANY, a Cor-
poration,

Claimant.

Final Decree.

The above-entitled cause having come on to be duly and regularly heard before the Honorable M. T. Dooling, Judge of the above-entitled court, libelant appearing by its proctor, Ira S. Lillick, Esquire, and claimant by its proctors, Ira A. Campbell, Esquire, and Messrs. McCutchen, Olney & Willard, and the Court having filed its opinion herein; and,

It appearing that the Court, heretofore, on the 9th day of May, 1914, made and entered an interlocutory decree in accordance with its said opinion, wherein it ORDERED, ADJUDGED AND DECREED that libelant have and recover from respondent and claimant the amount due it for damages sustained [36] by reason of the collision between the steamer "Gualala" and the steamer "Argyll," and ordered that said cause be referred to Francis Krull, Esquire,

United States Commissioner, to ascertain and compute the amount due to libelant in the premises, and to report the same to the Court; and,

It further appearing that the parties hereto have, by written stipulation filed herein, stipulated and agreed that the damages sustained by libelant by reason of the collision between said steamer "Gualala" and said steamer "Argyll" was the sum of twenty-five thousand two hundred fifty (25,250) dollars, and have further stipulated that the aforesaid reference to Francis Krull, Esquire, United States Commissioner, to ascertain and compute said damages be waived;

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the Gualala Steamship Company, a corporation, libelant herein, do have and recover of and from the Union Steamship Company, a corporation, claimant herein, the sum of twenty-five thousand two hundred fifty (25,250) dollars, with interest thereon at the rate of six (6) per cent per annum from October 15, 1912, until paid, together with its taxable costs in said cause.

Dated: November 7, 1914.

M. T. DOOLING,
Judge. [37]

[Endorsed]: Filed Nov. 7, 1914. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [38]

*In the United States District Court for the Northern
District of California, First Division.*

IN ADMIRALTY—No. 15,327.

GUALALA STEAMSHIP COMPANY, a Corpora-
tion,

Libelant,

vs.

The Steamer "ARGYLL," Her Engines, Boilers,
Machinery, Tackle, Apparel and Furniture,
Respondent.

THE UNION STEAMSHIP COMPANY, a Cor-
poration,

Claimant.

Notice of Appeal.

To the Clerk of the Above-entitled Court, and to the
Libelant, and to Ira S. Lillick, Esq., Its Proctor:

You and each of you will hereby please take notice
that The Union Steamship Company, a corporation,
claimant and respondent herein, hereby appeals from
the final decree made and entered herein in this
cause on the seventh day of November, 1914, to the
next United States Circuit Court of Appeals for the
Ninth Circuit, in and for said Circuit, at the City
and County of San Francisco, State of California.

Dated: November 7, 1914.

IRA A. CAMPBELL,

McCUTCHEN, OLNEY & WILLARD,

Proctors for Claimant and Respondent. [39]

Service of the within notice of appeal and receipt

of a copy is hereby admitted this 7 day of November, 1914.

IRA S. LILLICK,
Proctor for Libelant.

[Endorsed]: Filed Nov. 7, 1914. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [40]

*In the United States District Court for the Northern
District of California, First Division.*

IN ADMIRALTY—No. 15,327.

GUALALA STEAMSHIP COMPANY, a Corpora-
tion,

Libelant,

vs.

The Steamer "ARGYLL," Her Engines, Boilers,
Machinery, Tackle, Apparel and Furniture,
Respondent.

THE UNION STEAMSHIP COMPANY, a Cor-
poration,

Claimant.

Assignment of Errors.

Now comes UNION STEAMSHIP COMPANY, claimant and appellant herein, and says that in the record, opinion, decision and final decree in said cause there is manifest and material error, and said appellant now makes, files and presents the following assignment of errors, on which it relies, to wit:

1. That the District Court erred in rendering the decree herein of date the 7th day of November, 1914, against the steamer "Argyll."

2. That the District Court erred in holding and deciding that the said steamer "Argyll" was in any way at fault in the collision with the steamer "Gualala." [41]

3. That the District Court erred in holding and deciding that the said steamer "Argyll" was in fault for inefficiency of the lookout in not reporting when the "Gualala's" red light and her green light were visible at the same time, and in not reporting when he lost her green light and picked up her red light alone.

4. That the District Court erred in holding and deciding that there was inefficiency of the lookout in not reporting when the "Gualala's" red light and her green light were visible at the same time, and in not reporting when he lost her green light and picked up her red light alone.

5. That the District Court erred in holding and deciding that the said steamer "Argyll" was in fault because of negligence on the part of McAlpine, the deck officer, in not observing the "Gualala's" course, because of his failure to note when her red light and her green light were visible together and when her green light disappeared from view.

6. That the District Court erred in holding and deciding there was any negligence on the part of McAlpine, the deck officer, in not observing the "Gualala's" course, because of his failure to note when her red light and her green light were visible together and when her green light disappeared from view.

7. That the District Court erred in holding and

deciding that the said steamer "Argyll" was in fault because of McAlpine's failure in observing the "Gualala's" red light until warned by her whistle.

8. That the District Court erred in holding and deciding that there was any negligence because of McAlpine's failure in observing the "Gualala's" red light until warned [42] by her whistle.

9. That the District Court erred in holding and deciding that the said steamer "Argyll" was in fault because of the fact that when the "Gualala's" light was first sighted McAlpine contented himself with directing the quartermaster not to let her come any closer.

10. That the District Court erred in holding and deciding that there was any negligence on McAlpine's part because of the fact that when the "Gualala's" light was first sighted he contented himself with directing the quartermaster not to let her come any closer.

11. That the District Court erred in holding that seven minutes elapsed from the time the lookout reported the "Gualala's" light until the blowing of her whistle.

12. That the District Court erred in holding and deciding that the lookout and deck officer of said steamer "Argyll" were inattentive to their duties.

13. That the District Court erred in allowing libelant excessive damages.

14. That the District Court erred in not holding the steamer "Gualala" solely in fault for the collision between it and the said steamer "Argyll."

In order that the foregoing assignment of errors

may be and appear of record, said appellant files and presents the same and prays that such disposition be made thereof as is in accordance with the law and the statutes of the United States in such cases made and provided, and [43] said appellant prays a reversal of the decree herein heretofore made and entered in the above cause and appealed from.

Dated: November 7, 1914.

IRA A. CAMPBELL,
McCUTCHEN, OLNEY & WILLARD,
Proctors for Claimant and Respondent.

Receipt of a copy of the within assignment of errors is hereby admitted this 7 day of November, 1914.

IRA S. LILLICK,
Proctor for Libelant.

[Endorsed]: Filed Nov. 7, 1914. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [44]

**[Certificate of Clerk U. S. District Court to
Apostles.]**

I, Walter B. Maling, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing and hereunto annexed 44 pages, numbered from 1 to 44, inclusive, contain a full, true, and correct transcript of the records and proceedings as the same now remain on file and of record in the clerk's office of said District Court, in the cause entitled Gualala Steamship Company, a Corporation, vs. The Steamer "Argyle," Her Engines, etc., No. 15,327, and which said apostles on appeal are made up pursuant to and

in accordance with Section One of Rule Four of the Rules in Admiralty of the United States Circuit Court of Appeals, for the Ninth Circuit, as well as "Praeipie for Apostles on Appeal" (copy of which is embodied herein), and the instructions of proctors for claimant and appellant herein.

I further certify that the costs of preparing and certifying the foregoing Apostles on Appeal is the sum of Twenty-one Dollars and Ten Cents (\$21.10), and that the same has been paid to me by the proctors for appellant herein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 12th day of November, A. D. 1914.

[Seal]

WALTER B. MALING,
Clerk.

By C. W. Calbreath,
Deputy Clerk. [45]

[Endorsed]: No. 2516. United States Circuit Court of Appeals for the Ninth Circuit. Union Steamship Company, a Corporation, Claimant of the American Steamship "Argyll," Her Engines, Boilers, etc., Appellant, vs. Gualala Steamship Company, a Corporation, Appellee. Apostles. Upon Appeal from the United States District Court for the Northern District of California, First Division.

Received and filed November 12, 1914.

FRANK D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

No. 2516.

UNION STEAMSHIP COMPANY, a Corpora-
tion, Claimant of the American Steamship
"ARGYLL," Her Engines, Boilers, etc.,
Appellant,

vs.

GUALALA STEAMSHIP COMPANY, a Corpora-
tion,

Appellee.

**Stipulation for Consolidation [and Hearing of Case
No. 2516 With Case No. 2473, etc.].**

IT IS HEREBY STIPULATED AND
AGREED by and between the respective parties
hereto that the above-entitled cause may be con-
solidated and heard with the cause of Union Steam-
ship Company, a Corporation, Claimant of the
American Steamship "Argyll," Her Engines,
Boilers, etc., vs. Konstant Latz, and numbered
herein 2473, and that the record and briefs in said
last mentioned cause shall be considered with and as

a part of the record on file herein in the above-entitled cause.

EDWARD J. McCUTCHEN,
IRA A. CAMPBELL,
McCUTCHEN, OLNEY & WILLARD,
Proctors for Appellant.
IRA S. LILLICK and
L. A. REDMAN,
Proctors for Appellee.

[Endorsed]: No. 2516. In the United States Circuit Court of Appeals for the Ninth Circuit. Union Steamship Company, a Corporation, etc., Appellant, vs. Gualala Steamship Company, a Corporation, Appellee. Stipulation for Consolidation. Filed Nov. 12, 1914. F. D. Monckton, Clerk.

At a stated term, to wit, the October Term, A. D. 1914, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Thursday, the twelfth day of November, in the year of our Lord one thousand nine hundred and fourteen. Present: The Honorable WILLIAM B. GILBERT, Circuit Judge, Presiding; Honorable ERSKINE M. ROSS, Circuit Judge; Honorable CHARLES E. WOLVERTON, District Judge.

No. 2516.

UNION STEAMSHIP COMPANY, a Corporation,
Claimant of the American Steamship
“ARGYLL,” Her Engines, Boilers, etc.,
Appellant,
vs.

GUALALA STEAMSHIP COMPANY, a Corporation,
Appellee.

**Order Consolidating Case No. 2516 With Case No.
2473.**

Pursuant to the stipulation of counsel for the respective parties this day filed therefor, it is ORDERED that the above-entitled cause be, and hereby is consolidated for hearing with the cause entitled Union Steamship Company, a Corporation, claimant of the American Steamship “Argyll,” Her Engines, Boilers, etc., Appellant, vs. Konstant Latz, Appellee, No. 2473, and that the record and briefs in the last-mentioned cause shall be considered with and as a part of the record on file herein in the above-entitled cause.